

admitted to or voluntarily seeks treatment at the health care facility for non-job-related reasons. Records maintained by an agency dispensary are patient records for the purposes of these regulations except when such records result as a condition of employment or relate to an on-the-job occurrence. In these cases, the records are "Occupational Medical Records" as defined herein.

Non-personal Record means any agency aggregate or statistical record or report resulting from studies covering employees or resulting from studies or the work-site environment.

§ 293.503 Implementing instructions.

Agencies must issue written internal instructions describing how their EMFS is to be implemented. These instructions must—

(a) Describe overall operation of the system within the agency including the designation of the agency official who will be responsible for overall system management. When the agency has a medical officer, that individual must be named the system manager. The system manager may then designate others within the agency to handle the day-to-day management of the records, e.g., the custodian of the records at the site where they are maintained;

(b) Be prepared with joint participation by agency medical, health, and safety, and personnel officers;

(c) Describe where and under whose custody employee occupational medical records will be physically maintained;

(d) Designate which agency office(s) will be responsible for deciding when and what occupational medical records are to be disclosed either to other agency officials or outside the agency;

(e) Ensure proper records retention and security, and preserve confidentiality of doctor/patient relationships;

(f) Provide that when the agency is requesting an EMF from the National Personnel Records Center (NPRC), the request form will show the name, title, and address of that agency's system manager or designee, who is the only official authorized to receive the EMF;

(g) Be consistent with Office regulations relating to personnel actions

when medical evidence is a factor (5 CFR parts 339, 432, 630, 752, and 831);

(h) Provide guidance on how an accounting of any record disclosure, as required by the Privacy Act (5 U.S.C. 552a(c)), will be done in a way that ensures that the accounting will be available for the life of the EMF;

(i) When long-term occupational medical records exist, provide for the creation of an EMF for an employee transferring to another agency or leaving Government service, and whether an EMF is to be established at the time an employee is being reassigned within the agency;

(j) Ensure a right of access (consistent with any special Privacy Act handling procedures invoked) to the records, in whatever format they are maintained, by the employee or a designated representative;

(k) Ensure that a knowledgeable official determines that all appropriate long-term occupational medical records are in an EMF prior to its transfer to another agency, to the NPRC, or to another office within the same employing agency;

(l) Ensure that all long-term occupational medical records an agency receives in an EMF are maintained, whether in that same EMF or by some other agency procedure, and forwarded to a subsequent employing agency or to NPRC;

(m) Ensure that, if occupational medical records are to be physically located in the same office as the Official Personnel Folder (OPF), the records are maintained physically apart from each other;

(n) Sets forth a policy that distinguishes, particularly for purposes of records disclosure, records in the nature of physician treatment records (which are generally not appropriate for disclosure to non-medical officials) from other medical reports properly available to officials making management decisions concerning the employee;

(o) Provide guidance that distinguishes records properly subject to this part from those (e.g., Postal Service or Foreign Service employee medical records) subject to different rules, particularly in Privacy Act and Freedom of Information Act matters;

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(p) Ensure that guidance regarding the processing of Privacy Act matters is consistent with Office regulations implementing the Privacy Act at 5 CFR parts 293 and 297; and

(q) Ensure that no security classification is assigned to an EMF by including therein any occupational medical record that has such a classification. In this regard, the agency creating the classified medical record is required to retain it separately from the EMF while placing a notice in the EMF of its existence and describing where requests for this record are to be submitted.

§ 293.504 Composition of, and access to, the Employee Medical File System.

(a) All employee occupational medical records (which exclude employee assistance/counseling, patient, non-personal, and epidemiological records) whether they are maintained in an automated, microform, or paper mode, and wherever located in the agency, are part of the EMFS. The records maintained in the EMFS are part of a Governmentwide Privacy Act system of records established by the Office. Agencies have the responsibility to ensure that such documents are maintained in accordance with the Office's Privacy Act regulations in part 297 of this chapter, with the agency's instructions implementing those regulations, and with the retention schedule for employee medical records stipulated in § 293.511. While non-occupational/patient records pertaining to an employee are not required to be included as a record within the EMFS, under certain conditions to be discussed in subsequent OPM guidance, copies of such records are occupationally-related and, in those cases, may be included in the system.

(b) Agencies must provide employees access to their own EMFS records consistent with Office regulations contained in § 297.204(c) of this chapter. When unexcepted access can be provided directly to the employee, such unexcepted access must also be provided to any representative specifically designated in writing by the employee to receive the record. Disclosure of an employee's occupational medical

records to agency officials (both medical and non-medical) will be granted only when the specific information sought is needed for the performance of official duties.

(c) Other agencies for employee occupational medical records made to the custodian of the records must be processed in accordance with the disclosure provisions of the Privacy Act (5 U.S.C. 552a(b)) and the Office's regulations at part 297 of this chapter.

(d) Processing of a Privacy Act request for amendment of any EMFS record must be consistent with the Office's regulations contained in part 297 of this chapter regarding amendment of records.

[51 FR 33235, Sept. 19, 1986, as amended at 66 FR 66709, Dec. 27, 2001]

§ 293.505 Establishment and protection of Employee Medical Folder.

(a) As required by these rules, agencies must establish an EMF when the employee leaves the employing agency and occupational medical records for that employee exist; agencies may also establish an EMF (if none presently exists) for active employees if the agency chooses. An agency must request the transfer of an existing EMF (and maintain that EMF as received) at the same time it requests the transfer of an employee's OPF using the procedures contained in § 293.306.

(b) Neither the original occupational medical record nor duplicates are to be retained in the OPF. Prior to the establishment of an EMF for a separating employee, when such records are created, they must be maintained physically apart from the OPF, although they may be kept in the same office.

(c) Records in an EMF, whether or not located in an office other than where the OPF is maintained, must be properly safeguarded using procedures ensuring equal or greater levels of protection as those in § 293.106. Disclosures must be made only to those authorized to receive them, as described in § 293.504(b), and employees must be able to ascertain from agency implementing instructions the location of all of their medical records. An EMF must be under the control of a specifically designated medical, health, safety, or personnel officer as prescribed in the